

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations
Division 4, Chapter 7, Miscellaneous Rulings,
Subchapter 1, Service Charges,
Sections 4600 through 4603

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Department of Food and Agriculture to fulfill the intent of the Legislature to enhance the State's business and trade opportunities by providing requested non-regulatory services and to be able to recover its costs for providing such services.

Specific Purpose and Factual Basis

The specific purpose of this proposed action is to establish Chapter 7, Subchapter 1, and Sections 4600 through 4603, the miscellaneous rulings, service charges, general provisions, disclaimer of liability and financial responsibility, payment for services provided and schedule of charges for the types of non-regulatory services the Department may provide when requested.

The factual basis for the determination by the Department that the adoption of Chapter 7, Subchapter 1, and Sections 4600 through 4603 is necessary is as follows:

Existing law provides that the Department, for the purpose of enhancing the State's business and trade opportunities, may, upon request, perform non-regulatory services such as export market phytosanitary and product quality analyses, diagnostics, inspections and testing relating to nursery stock, plants, seeds, or plant pests and diseases. The Department may also establish charges sufficient to recover its costs for providing non-regulatory services (Food and Agricultural Code, Section 5851). The Department may also establish, by regulation, a schedule of charges to cover the Department's costs for the specific services it provides. Existing law also provides that regulations establishing charges adopted by the Secretary shall not be subject to review, approval, or disapproval by the Office of Administrative Law (Food and Agricultural Code, Section 5852).

Currently, to be acceptable to other states and foreign governments, phytosanitary and product quality certification and supporting analyses, diagnostics, and other testing of that type must be performed by an impartial third party governmental agency. As a result of its regulatory responsibilities, the Department has the technical capacity and expertise to meet current domestic and foreign government requirements for impartial third party governmental analytical, certification, diagnostic, inspection, quality assurance, and testing services. Additionally, the Department's external clients may request diagnostic services or scientific consultations simply because they want to draw upon the technical expertise of the Department. These services are not required by a regulation and are non-regulatory activities. Non-regulatory activities are services for which the entities that receive the benefits should pay the costs.

Currently, the Department does not have a separate source of funding for providing non-regulatory services and has not been previously authorized to charge entities requesting non-regulatory services for the approximate cost of providing such services. As a result, the Department has a limited capability for providing requested services without an excessive drain on its resources and the expenditure of public funds that benefit a specific requester.

The Department's Plant Pest Diagnostics Branch currently provides diagnostics services both to internal and external clients. The Department routinely receives requests for non-regulatory services in nematology and seed pathology. There are also limited numbers of requests for entomology, general plant pathology, plant taxonomy and scientific consultation received. External clients include representatives of the general public, agricultural industry business enterprises, growers, other state departments of agriculture and other private entities and government agencies.

The charges set forth in this proposed regulation approximate the cost of the Department's staff performing the services provided. The service charges have been calculated using the approximate hourly labor costs (for the classifications of the staff members involved in providing the services), the amounts of time required to provide the service that is based upon historical experience, and the cost of supplies and materials.

The proposed action will establish Chapter 7, Miscellaneous Rulings; and, Subchapter 1, Service Charges.

The proposed action will also establish:

Section 4600, General Provisions, regarding the types of non-regulatory services the Department intends to provide on a charge-for-service basis, the timeframes for providing some of those services, the reporting of pest significant pest finds, when payment is due and late for such services, and when such services may be refused.

Section 4601, Disclaimer of Liability and Financial Responsibility, which limits the liability and financial responsibility of the Department when it provides non-regulatory services.

Section 4602, Payment for Services Provided, that establishes the charges are based upon the approximate cost of the service rendered, procedures for charging additional fees upon approval of the client and conditions for refunding fees to the client.

Section 4603, Service Charges, will establish the schedule of charges for analytical, diagnostic, inspection, testing and other non-regulatory services related to nursery stock, plants, seed, or other plant pests and diseases.

The effect of these proposed regulations will be to provide authority for the Department to recover its costs for providing requested non-regulatory services and to enable the client that requests the service to understand the Department's costs, billing procedures and timeframes for rendering such services.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that the proposed adoption of Chapter 7, Subchapter 1, and Sections 4600 through 4603 do not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

These regulations will establish the procedures for the Department to recover its approximate costs when providing a requested service. There is no economic impact on businesses that choose not to request a non-regulatory service. Fees paid by those requesting such services fund the approximate program costs for providing the service. Those requesting such services are likely doing so to increase the value or marketability of their product or to determine what is causing damage to their product or to

increase their technical knowledge in a scientific area. Once the Department renders the requested service, it should make the product more desirable to purchasers and greater profits may result. Alternatively, the requester may be able to eliminate an organism causing damage to the product or use their increased technical knowledge to benefit their business, organization or agency. The adoption of these regulations will allow the Department to provide the requested services without the excessive use of Departmental resources or expenditure of public funds.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the adoption of Chapter 7, Subchapter 1 and Sections 4600 through 4603:

E-mail of April 25, 2002 to Stephen Brown from Timothy Tidwell.

Memorandum of April 11, 2002 to Stephen Brown from Dennis Mayhew.

E-mail of March 5, 2002 to Stephen Brown from Timothy Tidwell.

E-mail of November 3, 2000 to Ralph Percious from Bill Callison.

Internal Memorandum of October 26, 2000 to Barbara J. Hass from Bill L. Callison.

E-mail of September 19, 2000 to John Chitambar from Bill Callison.

E-mail of June 16, 2000 to Bill Callison from Jack Wright.

E-mail of January 3, 2000 to Bill Callison from Timothy Tidwell.